

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

STRUDEL HOLDINGS LLC and AVR AH LLC,

Debtors.¹

)
) Chapter 11
)
) Case No. 23-90757 (CML)
)
) (Jointly Administered)
)

**APPELLANT FLEEGER FAMILY FIRST LP'S STATEMENT OF APPELLATE
ISSUES AND DESIGNATION OF RECORD ON APPEAL PURSUANT TO FED. R.
BANK. P. 8009**

In accordance with Rule 8009 of the Federal Rules of Bankruptcy Procedure, Appellant Fleegeer Family First LP ("Fleegeer" or "Appellant") hereby submits its *Appellant Fleegeer Family First LP's Statement of Issues and Designation of Record on Appeal Pursuant to Fed. R. Bankr. P. 8009* in connection with its appeal from the bankruptcy court's *Memorandum Order Granting Emergency Motion to Modify Sale Order to Extend the Closing Date* (Doc. No. 404) entered on January 29, 2024, and any adverse orders, rulings, decrees, decisions, or opinions subsumed therein.

Statement of Issues Presented on Appeal

1. Whether the Bankruptcy Court erred by modifying the Final Sale Order under Section 105(a) of the Bankruptcy Code thereby divesting the Back-Up Bidder of its intervening, vested rights.
2. Whether the Bankruptcy Court erred by modifying the Final Sale Order under Rule 60(b) of the Federal Rules thereby divesting the Back-Up Bidder of its intervening, vested rights.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: AVR AH LLC (0148) and Strudel Holdings LLC (5426). The location of the Debtors' corporate headquarters and the Debtors' service address is: PO Box 4068, Aspen, CO 81612.

3. Whether the Bankruptcy Court erred by concluding that the Secured Parties met their burden of showing that “extraordinary circumstances” warranted relief under Rule 60(b) or Section 105(a), absent which “manifest injustice” would result.
4. Whether the Bankruptcy Court erred in concluding that, despite the Secured Parties’ failure to seek relief from the Bankruptcy Court before the Final Sale Order’s deadline expired, they nevertheless met Rule 60(b)’s “extraordinary circumstances” and “manifest injustice” requirements.
5. Whether the Secured Parties proved that, notwithstanding the data breach, they would have closed by the Final Sale Order’s deadline.
6. Whether the Bankruptcy Court erred in concluding that, by modifying the Final Sale Order, no party’s rights were materially prejudiced.
7. Whether, for purposes of Section 363(m) of the Bankruptcy Code, the Secured Parties purchased the Property in good faith.

Designation of Record on Appeal

Appellant designates the following items for inclusion in the record on appeal. Each designated item or Docket Number shall also include any and all exhibits to such item.

Docket Date	Docket Number	Document Name
11/09/2023	245	Corrected Order (A) Authorizing the Sale of Assets Free and Clear of All Liens, Encumbrances and Other Interests, (B) Approving the Purchase and Sale Agreement, (C) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Granting Related Relief.
11/23/2023	260	Notice of Postponement of Closing
11/27/2023	265	Debtors’ Emergency Motion for Status Conference
11/29/2023	269	Statement of Back-Up Bidder Fleeger Family First LP Regarding Notice of Postponement of Closing and Emergency Motion for Status Conference
11/29/2023	272	Notice of Intent to Close Sale to Back-Up Bidder
11/30/2023	276	Secured Parties’ Emergency Motion to Modify the Sale Order to

Docket Date	Docket Number	Document Name
		Extend the Closing Date (Doc. No. 276)
11/30/2023	334	Hearing Transcript – November 30 Status Conference on Debtors’ Emergency Motion for Status Conference (Doc. No. 278) ²
12/27/2023	309	Order Granting Secured Parties’ Emergency Motion to Modify the Sale Order to Extend the Closing Date (Doc. No. 276)
12/30/2023	313	Fleeger Family First LP’s Emergency Motion for Reconsideration and Other Relief
01/03/2024	319	Fleeger’s Notice of Filing of Demonstrative Exhibit Used in the January 3, 2024 Status Conference
01/03/2024	333	Hearing Transcript – January 3 Status Conference on Fleeger Family First LP’s Emergency Motion for Reconsideration and Other Relief (Doc. No. 313)
01/05/2024	324	Fleeger Family First LP’s Notice of Filing of Evidence and Request for Judicial Notice in Support of Fleeger Family First LP’s Reconsideration Motion to Vacate December 27, 2023 Order
01/05/2024	325	Fleeger Family First LP’s Notice of Filing of Demonstrative Exhibit Used in the January 5, 2024 Hearing
01/05/2024	338	Hearing Transcript – January 5 Hearing on Fleeger’s Family First LP’s Emergency Motion for Reconsideration and Other Relief (Doc. No. 313)
01/05/2024	326	Order Granting Reconsideration of Secured Parties Emergency Motion to Modify Sale Order to Extend the Closing Date (Doc. No. 276)
01/16/2024	349	Fleeger Family LP’s Motion to Compel Discovery from the Secured Parties
01/17/2024	353	Hearing Transcript of January 17 Hearing on Motion for Expedited Discovery and Motion to Compel (Doc. No. 354)
01/17/2024	356	Order Denying Emergency Motion for Expedited Discovery
01/17/2024	357	Order Regarding Motion to Compel Discovery
01/20/2024	367	Fleeger Family First LP’s Notice of Filing of Evidence and Request for Judicial Notice on January 22, 2024 Hearing
01/20/2024	368-27	Secured Parties’ Exhibit 27
		11/22/23 Email from J. Wolfshohl to G. Cruciani “AVR”
01/20/2024	372	Fleeger Family First LP’s Witness and Exhibit List for Hearing on January 22, 2024, at 2:30 P.M. (Prevailing Central Time)
01/20/2024	372-4	Fleeger Family First LP Exhibit FFFX001C
		CORRECTED Order (A) Authorizing and Approving the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (B) Approving the Purchase and Sale Agreement, (C) Authorizing the Assumption and Assignment of Certain

² References to the Docket are to matters on file in the bankruptcy case.

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		Executory Contracts and Unexpired Leases, and (D) Granting Related Relief [Docket No. 245] Dated November 9, 2023
01/20/2024	372-5	Fleeger Family First LP Exhibit FFFX001D Exhibit 1 to Emergency Motion for Status Conference [Docket No. 265-1] Dated November 21, 2023, Comprising letter Notice of Default under Purchase Agreement <i>Dated November 21, 2023</i>
01/20/2024	372-6	Fleeger Family First LP Exhibit FFFX001E Debtors' Notice of Postponement of Closing [Docket No. 260] Dated November 23, 2023
01/20/2024	372-8	Fleeger Family First LP Exhibit FFFX001G Statement of Back-Up Bidder Fleeger Family Trust LP Regarding Notice of Postponement of Closing [Docket No. 269] Dated November 29, 2023
01/20/2024	372-11	Fleeger Family First LP Exhibit FFFX001J Debtors' Notice of Intent to Close Sale to Back-Up Bidder [Docket No. 272] Dated November 29, 2023
01/20/2024	372-14	Fleeger Family First LP Exhibit FFFX001M Supplemental Response and Letter in Support of Secured Parties' Emergency Motion (related document(s):265 Emergency Motion, 276 Emergency Motion). Filed by Bermudez Mutuari, Ltd, Nineteen77 Capital Solutions A LP, Wilmington Trust National Association [Docket No. 282] Dated December 3, 2023
01/20/2024	372-21	Fleeger Family First LP Exhibit FFFX008 11/20/2023 at 4:56:36 PM Email from Randal Johnson to Doug Brickley, Subject Line: AVR: Unpaid HOA Fees
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01/20/2024	372-44	Fleeger Family First LP Exhibit FFFX031 11/26/2023 at 12:10:52 PM Email from Randal Johnson to Doug Brickley and Joshua Caldwell, Subject Line: RE: Unpaid HOA Fees
01/20/2024	372-45	Fleeger Family First LP Exhibit FFFX032 11/26/2023 at 1:17:25 PM Email from Laura Metzger to Doug Brickley; Randal Johnson and Joshua Caldwell, Subject Line: RE: Unpaid HOA Fees
01/20/2024	372-46	Fleeger Family First LP Exhibit FFFX033 11/26/2023 at 9:12:04 PM Email from Tad Davidson to Joshua Wolfshohl, Subject Line: Re: Unpaid HOA Fees
01/20/2024	372-50	Fleeger Family First LP Exhibit FFFX037 11/27/2023 at 10:57:53 AM Email from Randal Johnson to Joshua Caldwell, Subject Line: Re: AVR HOA Open Invoices
01/20/2024	372-52	Fleeger Family First LP Exhibit FFFX039 11/27/2023 at 12:44:25 PM Email from Randal Johnson to Joshua Caldwell and Lilly Kaufmann, Subject Line: RE: AVR/Strudel - HOA Dues/Fees Reconciliation
01/20/2024	372-56	Fleeger Family First LP Exhibit FFFX043

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		11/27/2023 at 5:41:58 PM Email from Joshua Caldwell to Doug Brickley, Sidharth Kandoi, Randal Johnson, and Lilly Kaufmann, Subject Line: [External] OPEN INVOICES PRIOR JULY 27 – AFTER JULY 28-2023 – (STOUT EDITS) v3.xlsm
01/20/2024	372-57	Fleeger Family First LP Exhibit FFFX044 11/27/2023 Debtors' Emergency Motion for Status Conference [Docket No. 265]
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01/20/2024	372-65	Fleeger Family First LP Exhibit FFFX052 Spreadsheet Regarding Prepetition and Post-Petition HOA Dues
01/20/2024	372-66	Fleeger Family First LP Exhibit FFFX053 11/20/2023 at 3:58:24 PM Email from Lilly Kaufmann to Emily Lewis, Tucker Emily, jbrinckley@swlaw.com; apidcock@swlaw.com; mlindsay@swlaw.com; Charles McGee; Laura Metzger, Aaron Power; jsnow@swlaw.com; Nicole Walsh and Joshua Wolfshohl, Subject Line: RE: Items Needed for Closing: 00501164 Ref 1: Aspen Valley Ranch – 282.31 Acres, Aspen, CO
01/21/2024	375	Fleeger Family First LP's First Supplement to Its Witness and Exhibit List
01/22/2024	378	Fleeger Family First LP's Proposed Findings of Fact and Conclusions of Law
01/22/2024	381	Fleeger Family First LP's Second Supplement to Its Witness and Exhibit List for Hearing on January 22, 2024, at 2:30 P.M. (Prevailing Central Time)
01/22/2024	381-3	Fleeger Family First LP Exhibit FFFX077 08/10/2023 Global Notes Regarding Debtors' Schedules of Assets and Liabilities and Statements of Financial Affairs [Docket No. 56]
01/22/2024	385	Fleeger Family First LP's Notice of Filing of Demonstrative Exhibit Used in the January 22, 2024 Hearing (385) and Demonstrative Exhibit A (385-1)

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01/22/2024	401	Hearing Transcript – January 22 Evidentiary Hearing on Secured Parties Emergency Motion to Modify Sale Order to Extend the Closing Date (Doc. No. 276)
01/29/2024	404	Memorandum Order Granting Emergency Motion to Modify Sale Order to Extend the Closing Date
01/30/2024	405	Notice of Appeal by Fleegeer Family First LP of Memorandum Order Granting Emergency Motion to Modify Sale Order to Extend the Closing Date
1/30/2024	409	Fleegeer Family First LP’s Emergency Motion for Stay Pending Appeal
1/31/2024	411	Notice of Closing of Sale Pursuant to Agreement For Purchase and Sale of Real Property to Chiron AVR LLC

Attached as “Exhibit 1” is Fleegeer’s previously filed Statement of Appellate Issues and Designation of Record on Appeal, which was filed on February 12, 2024 in the U.S. District Court for the Southern District of Texas where this case is currently on review. *See In re: Strudel Holdings LLC*, No. 4:24-cv-00356 (S.D. Tex.). Fleegeer reserves the right to request additional items for inclusion in the record on appeal, or to request further supplementation of the record.

Dated: February 21, 2024

By: /s/ Barrett H. Reasoner

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Counsel for Appellant, Fleegeer Family First LP

CERTIFICATE OF SERVICE

I certify that on February 21, 2024, a true and correct copy of the above was served by this court's CM/ECF to all parties that are registered to receive such notice in the above-captioned case.

/s/ Barrett H. Reasoner

Barrett H. Reasoner

Exhibit 1

NO. 4:24-CV-00356

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FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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Appellant.

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² References to the Docket are to matters on file in the bankruptcy case.

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Dated: February 12, 2024

By: /s/ Barrett H. Reasoner

Barrett H. Reasoner

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CERTIFICATE OF SERVICE

I certify that on February 12, 2024, a true and correct copy of the above was served by this court's CM/ECF to all parties that are registered to receive such notice in the above-captioned case.

/s/ Barrett H. Reasoner

Barrett H. Reasoner